

TANJUNG RHU LAND SDN BHD**A****v.****MAMLAKA LANGKAWI SDN BHD****HIGH COURT MALAYA, ALOR SETAR****B****ZAMANI A RAHIM JC****[ORIGINATING SUMMONS NO: 24-1668-2009 (MT3)]****10 JANUARY 2010**

LAND LAW: *Caveat - Application for extension - Whether wrongful lodgement of caveat - Whether defendant entitled to compensation - National Land Code, ss. 323, 326, 329, 340(3), (4)*

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The plaintiff was the original proprietor of lands held under document of titles. One Pakatan Permai Sdn Bhd ('PPSB') received the titles from the plaintiff pursuant to a sale and purchase agreement ('SPA'). The lands were subsequently acquired by the defendant from PPSB pursuant to a sale and purchase agreement ('2nd SPA'). The defendant became the registered proprietor of the lands which were registered in 2002 and 2005. The lands were sub-divided from lots which had been previously amalgamated. One portion of that amalgamated land was still pending sub-division. Therefore, the defendant brought an action against the plaintiff and PPSB in a KL Suit for, *inter alia*, specific performance of the 2nd SPA in relation to the remaining unperformed obligation to sub-divide and transfer the said portion of the land to the defendant. On or around 16 October 2008, the plaintiff lodged a private caveat on the lands claiming that the lands had been unlawfully transferred to the defendant. The plaintiff contended that it had a caveatable interest, having decided to counterclaim against the defendant and PPSB in the KL Suit to seek the re-transfer of the lands to it. Upon discovery of the caveat, the defendant applied to remove the caveat pursuant to s. 326 of the National Land Code ('NLC') and the Kedah Land and Mines Office duly issued a notice in Form 19C to the plaintiff. The plaintiff now applied for extension of the caveat. It was the plaintiff's case that the registration of title of the lands to the defendant was unlawful because of the alleged non-fulfilment of conditions precedent in the 2nd SPA.

D**E****F****G****Held (dismissing the plaintiff's application):****H**

- (1) In order for the caveat to be extended beyond its validity as provided in the NLC, the plaintiff must prove three things (1) that it had a caveatable interest; (2) if a caveatable interest was established, then whether the evidence produced in support of its claim disclosed a serious question to be tried, and (3) if both

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- A questions were resolved in the plaintiff's favour, whether the balance of convenience or justice lay in favour of the caveat remaining on the register pending the disposal of the plaintiff's suit. (para 14)
- B (2) The facts showed that the plaintiff had not sought for the return of the instruments of transfer for the lands in the 1st SPA. Even if the 1st SPA was terminated, the plaintiff failed to show any evidence which could defeat the defendant's registered title under s. 340 NLC whereby the title of a registered owner was indefeasible save in the circumstances set out in s. 340(2) NLC. (paras 15 & 16)
- C (3) Section 340(2) and (3) NLC did not apply in the present case as there was no allegation of any fraud, misrepresentation or forgery against the defendants. The transfer of the lands was carried out using valid registrable instruments duly executed by the plaintiff. The lands were unconditionally transferred to the defendant in good faith for valuable consideration. (para 28)
- D (4) The purported termination of the 1st SPA had no relevance to the defendant's rights as a registered proprietor. Even if the rights to title of PPSB were defeasible as a result of the alleged termination of the SPA, the defendant as a subsequent *bona fide* purchaser for value would be granted protection under the NLC by virtue of the proviso to s. 340(3) NLC. (para 30)
- E (5) The plaintiff was not a person or body which could successfully claim title to any registrable interest in the lands from the defendant justifying the entry of a caveat. The plaintiff's rights were only contractual rights against PPSB based on the 1st SPA. The defendant was not party or privy to the 1st SPA. Neither did the plaintiff have any privity of contract with the defendant. Accordingly, the plaintiff did not have a caveatable interest within the meaning of s. 323 NLC. As there was no lawful basis under which the good titles obtained by the defendant from PPSB in respect of the lands could be rendered defeasible, there was no issue to be tried. (paras 32 & 35-37)
- F (6) The defendant was in possession and occupation of the lands since 1997 with the full knowledge and consent of the plaintiff. The defendant had invested more than RM200 million to construct and develop the holiday resort on the lands which had been in operation since April 2005. As such, the existence of the caveat over the lands was prejudicial to the defendant as the caveat affected the value of the lands and thereby the rights and interests of the
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shareholders of the defendant. Further, it diminished investor confidence in the defendant and that was a loss which was unquantifiable. The prejudice to the defendant was further compounded by the fact that the plaintiff had acted with inordinate delay in prosecuting its alleged rights. The titles were registered way back in 2002. The plaintiff had failed to provide any explanation for the delay in lodging the caveat and filing a counterclaim, and that too when the defendants had filed the KL suit for specific performance. (paras 38-40)

(7) The fact that the defendant had no plans to dispose of the lands was not a ground for the extension of the validity of the caveat. The defendant might want to dispose of them if the right opportunity arose, or deal with the lands in ways other than which involved a disposition. (para 41)

(8) The lands were encumbered by a caveat and the legal implications that followed include the inability to charge, sub-divide or amalgamate the lands. That was a prejudice to the defendant that should tilt the balance of convenience against the extension of the caveat. (para 42)

[Caveat ordered to be removed; defendant at liberty to file application for compensation for wrongful lodgement of caveat by virtue of s. 329 NLC.]

Case(s) referred to:

- Adorna Properties Sdn Bhd v. Boonsom Boonyanit* [2001] 2 CLJ 133 FC (**refd**)
DCB Finance Berhad v. Hii Yik Ting [1996] 1 LNS 12 HC (**refd**)
Kumpulan Sua Betong Sdn Bhd v. Dataran Segar Sdn Bhd [1992] 1 CLJ 20; [1992] 1 CLJ (Rep) 150 SC (**refd**)
Luggage Distributors (M) Sdn Bhd v. Tan Hor Teng & Anor [1995] 3 CLJ 520; [1995] 2 CLJ 713 CA (**refd**)
Megapillars Sdn Bhd v. Loke Kwok Four [1996] 4 CLJ 82 HC (**refd**)
Murugappa Chettiar Lakshmanan (Wasi Tunggal Harta Pesaka MRL Murugappa Chettiar, Simati) v. Lee Teck Mook [1995] 2 CLJ 545 CA (**refd**)
Rakyat Corporation Sdn Bhd v. Abd Naeem Tarmiji [2008] 10 CLJ 455 HC (**refd**)
Urethane Systems Sdn Bhd v. Quek Yak Kang [2006] 6 CLJ 81 HC (**refd**)
Wong Kuan Tan v. Gambut Development Sdn Bhd [1984] 2 CLJ 26; [1984] 1 CLJ (Rep) 441 FC (**refd**)
Yuny-Li Home Care Sdn Bhd v. Fairview Development Sdn Bhd [2009] 1 LNS 543 HC (**refd**)

Legislation referred to:

National Land Code, ss. 214A, 323(1), 326, 340(1), (2), (3)

For the plaintiffs - Tan Keng Teck; M/s Lim Kian Leong & Co

For the defendants - Elaine Yap; M/s Wong & Partners

Reported by Usha Thiagarajah

A JUDGMENT

Zamani A Rahim JC:

Introduction

B [1] The originating summons dated 2 September 2009 filed by the plaintiffs was for an extension of the validity of a private caveat *vide* Presentation No. 7836/2008 lodged by the plaintiffs.

C [2] The plaintiffs were formerly known as Promet (Langkawi) Resorts Sdn Bhd (“Promet”) while the defendants were formerly known as MAS Hotels & Boutique Sdn Bhd (“MHB”). It is convenient to refer to the parties hereafter by these abbreviations, as adopted in the affidavits filed.

Background Facts

D [3] The defendants (MHB) is the registered proprietor of the lands held under document of titles No. HS(D) 1, Lot No. 756; HS(D) 2, Lot No. 757; HS(D) 624, Lot No. 905 and HS(D) 625, Lot No. 906 (“the lands”).

E [4] The lands were duly registered in the name of the defendants (MHB) having received transfers of the same from Pakatan Permai Sdn Bhd (“PPSB”) back in 2002 and 2005, details of which are as follows.

	Title	Date of Registration
F	(1) HS(D) 1, Lot No. 756	6 October 2002
	(2) HS(D) 2, Lot No. 757	6 October 2002
	(3) HS(D) 624, Lot No. 905	15 August 2005
	(4) HS(D) 625, Lot No. 906	15 August 2005

G [5] It is undisputed that the defendants (MHB) have had uninterrupted enjoyment of good title to the lands since the aforesaid dates of registration, and have in fact been in occupation of the lands with the full knowledge and consent of the plaintiffs (Promet) since 1997.

H [6] The lands were acquired by the defendants (MHB) from PPSB pursuant to a sale and purchase agreement dated 16 June 1997 (“SPA”) between the defendants (MHB) and PPSB and had been subdivided from lots which had been previously amalgamated. PPSB had received titles

I from the plaintiffs (Promet), the original proprietor.

[7] One portion of that amalgamated land, that is, HS(D) 623 Mukim Ayer Hangat is still pending sub-division. Thus, on 30 June 2006, the defendants (MHB) commenced legal action against the plaintiffs (Promet) and PPSB in Kuala Lumpur High Court Suit No. S3-22-634-2006 (“KL Suit”) seeking, *inter alia*, specific performance of the SPA in relation to the remaining unperformed obligation to sub-divide and transfer of HS(D) 623 Mukim Ayer Hangat to the defendants (MHB).

[8] Notwithstanding the date of the transfers of the lands to the defendants (MHB), it was only on or around 16 October 2008 that the plaintiffs (Promet) lodged a private caveat under Presentation No. 7836/2008 (“the caveat”) on the lands, claiming that the lands had been unlawfully transferred to the defendants (MHB). The plaintiffs (Promet) contends that it has a caveatable interest, having on 30 March 2007 decided to counter claim against the defendants (MHB) and PPSB in the KL Suit to seek the re-transfer of the lands to it.

[9] Upon discovery of the caveat, the defendants (MHB) promptly applied to remove the caveat pursuant to s. 326 of the National Land Code 1965 (“NLC”). The Kedah Land and Mines Office duly issued a notice in Form 19C which the plaintiffs (Promet) received on 3 August 2009.

Section 326 Of The NLC

[10] Under s. 326 of the NLC, the defendants (MHB) as the registered proprietor of the lands bound by the caveat, is entitled to apply to the registrar for the removal of the caveat. Section 326 is reproduced below:

326. Removal of private caveats by Registrar.

- (1) Any person or body whose land or interest is bound by a private caveat may at any time apply in Form 19H to the Registrar for its removal, and such application shall be accompanied by the prescribed fee.
- (1A) On receiving any application for removal under this section, the Registrar shall:
 - (a) serve upon the person or body at whose instance the caveat was entered a notice of intended removal in Form 19C; and
 - (b) make an endorsement on the register document of title that the notice in Form 19C has been served on the person or body at whose instance the caveat was entered and of the date of such service, and shall sign and seal the endorsement.

- A** (1B) In the case in which a notice of intended removal in Form 19C has been served under sub-section (1A), the caveat shall lapse and be of no effect at the expiry of two months specified in the notice unless before the expiry of that period the Registrar shall have been served with an order of the Court extending the time provided in the said notice.
- B** (2) The Court may, on the application of any person or body on whom such a notice has been served under sub-section (1A) (and acting, if the circumstances so require, *ex parte*), from time to time extend the said period of two months; and the Registrar, on being duly served with an order of the Court under this sub-section, shall make an endorsement on the register document of the title of the date of service on him of the order and of the period of the extension, and shall sign and seal the endorsement.
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- D** (3) The Registrar shall remove any caveat pursuant to this section by canceling the entry thereof on the register document of title, and noting thereon the reason for the cancellation and the date thereof.
- (4) Every cancellation under sub-section (3) shall be signed and sealed.
- E** [11] The test to be fulfilled by a caveator applying for an extension of his caveat under s. 326 of the NLC is identical to that in an application for a removal of caveat under s. 327 of the NLC. In *Rakyat Corporation Sdn Bhd v. Abd Naeem Tarmiji* [2008] 10 CLJ 455; [2008] 4 MLJ 111 at p 119 whereby it was held:
- F** The burden on the caveator (in an application under s. 327 of the NLC) is the same burden as imposed in an application for the extension of caveat under s. 326 of the NLC.
- G** [12] In a well established authority of the Court of Appeal in *Luggage Distributors (M) Sdn Bhd v. Tan Hor Teng & Anor* [1995] 3 CLJ 520; [1995] 2 CLJ 713; [1995] 1 MLJ 719, Gopal Sri Ram JCA (as he then was) at pp. 535-537 explained that the test is a three-stage test as follows:
- H** In my judgment, there are three stages through which an inquiry of this nature must go. The first stage is the examination of the grounds expressed in the application for the caveat. If it appears that the grounds stated therein are insufficient in law to support a caveat, then *cadit quaestio*, and the caveat must be removed without the necessity of going any further.
- I** ...

The matter does not come to an end once the caveator satisfies the Court that his claim as expressed in the application in Form 19B amounts in law to a caveatable interest. He must go on to show, in appropriate cases, that, based on the affidavits filed, his claim discloses a serious question meriting a trial. This then is the second stage.

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The third stage is arrived at only after the first two hurdles have been crossed by the caveator. Here the question to be asked relates to the balance of justice, or what Lord Diplock termed in *Eng Mee Yong (supra)* as 'the balance of convenience'. As to the matters that go to determine in which direction the balance should tilt, these have already been set out in such clear terms by Lord Diplock in *Eng Mee Yong* that mere repetition becomes unnecessary. It is only upon satisfying these three stages of curial scrutiny that a caveat may be permitted to remain. That this should be so is only logical; for it is a serious matter to caveat a person's property, and unless a case is properly made out, a caveat ought not be permitted to remain on the register a moment longer than is absolutely necessary.

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[13] Also in the case of *Murugappa Chettiar Lakshmanan (Wasi Tunggal Harta Pesaka MRL Murugappa Chettiar, Simati) v. Lee Teck Mook* [1995] 2 CLJ 545, the three-stage tests were laid down in considering whether a caveat should remain on the register of document of title or be removed, a caveator must pass the three-stage test expressed as follows:

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- (a) whether he has disclosed a caveatable interest in his application under s. 323(1) of the Code;
- (b) if he has established a caveatable interest, then whether the evidence produced in support of this claim disclose serious questions to be tried; and
- (c) if both questions are resolved in the caveator's favour, then whether the balance of convenience or justice, lies in favour of the caveat remaining on the register pending the disposal of his suit.

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[14] As such, in order for a caveat to be extended beyond its validity as provided in the NLC, the plaintiffs (Promet) must prove three things, namely:

- (a) That the plaintiffs (Promet) had a caveatable interest.
- (b) If the plaintiffs (Promet) has established that it has caveatable interest, then whether the evidence produced in support of its claim discloses a serious question to be tried, and
- (c) If both questions above are resolved in the caveator's favour, then whether the balance of convenience or justice, lies in favour of the caveat remaining on the register pending the disposal of this suit.

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A Plaintiffs' (Promet) Case

B [15] It is the plaintiffs' (Promet) submission that the registration of title of the lands to the defendants (MHB) is unlawful because of the alleged non-fulfillment of conditions precedent in the 1st and 2nd SPAs. The plaintiffs' (Promet) submission on this issue is misconceived as the right to lodge a caveat must be minutely inquired into in order to decide whether the caveat should remain or be removed: see *Kumpulan Sua Betong Sdn Bhd v. Dataran Segar Sdn Bhd* [1992] 1 CLJ 20; [1992] 1 CLJ (Rep) 150. On the facts, it is evident that the 1st SPA did not terminate on 31 December 1998. For example, there is not a shred of evidence of the plaintiffs (Promet) seeking the return of the instruments of transfer for the lands.

D [16] Further or in the alternative, even if the 1st SPA did terminate on 31 December 1998, the plaintiffs (Promet) had failed to show any evidence which can defeat the defendants' (MHB) registered title under s. 340 of the NLC whereby the title of a registered owner is indefeasible save in the circumstances set out in s. 340(2): see *Adorna Properties Sdn Bhd v. Boonsom Boonyanit* [2001] 2 CLJ 133.

E [17] The plaintiffs (Promet) have also submitted that there is no evidence that the plaintiffs (Promet) and PPSB had consented to waive the conditions precedents of the 1st and 2nd SPAs. The defendants (MHB) have no knowledge of the understanding reached between the plaintiffs (Promet) and PPSB under the 1st SPA. What the defendants (MHB) now know is that time was of the essence of the 1st SPA, and that all indications point to the plaintiffs (Promet) having waived the right to terminate the 1st SPA after the critical date 31 December 1998 passed, and at such, time ceases to be of the essence.

G [18] As between the defendants (MHB) and PPSB, the plaintiffs (Promet) have no privity of contract and the issue can have no relevance to the plaintiffs' (Promet) claim to title because PPSB had the title and the transfer to the defendants (MHB) was registered as long ago as 2002. The defendants (MHB) had not presented any memorandum of transfer in respect of land which had not been sub-divided (HS(D) 623) and was still subject to the condition of sub-division.

H [19] Further, the defendants (MHB) is a *bona fide* purchaser for valuable consideration. 94% of the purchase price, or more than RM69 million has been paid for the portion of land that have been sub-divided and transferred to the defendants (MHB) by PPSB. The lands which are affected by the plaintiffs' (Promet) caveat are the lands that have already been sub-divided and paid for by the defendants (MHB) under the 2nd SPA.

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[20] The plaintiffs (Promet) also contend that the legal interest of the lands has remained with the plaintiffs (Promet) due to the alleged termination of the 1st SPA based on *Kumpulan Sua Betong's* case, *supra*. The case of *Kumpulan Sua Betong, supra* may be distinguished on its facts.

(a) in *Kumpulan Sua Betong, supra* the cause for the possible invalidation of registration of title was alleged non-compliance with s. 214A of the NLC which required the Estate Land Board approval for transfer. Although it was also a condition precedent, the court considered only the statutory and penal aspect of non-compliance with s. 214A of the NLC and the possible effect of that on the transaction.

(b) insofar as the case holds that was premature to invoke s. 340 of the NLC, the case was decided before *Adorna Properties Sdn Bhd, supra* which has made it clear that even transfers on voidable instruments are protected by s. 340 of the NLC. Furthermore, unlike the present case, where the relevant facts are undisputed, there were disputes of facts in that case, whether the land in question was a part of and contiguous to the rest of the estate land.

[21] At such, the case of *Kumpulan Sua Betong, supra* has no application to the facts herein. As it stands, the defendants (MHB) are the legal owner of the lands with an indefeasible title.

[22] The plaintiffs (Promet) further submits that the fact that the defendants (MHB) had not applied to strike out the counter claim in the KL Suit is evidence that there are serious issues to be tried in the counter claim. This submission is also misconceived as the defendants' (MHB) defence to the counter claim was filed without prejudice to the right to strike out the counter claim struck out at any time, and together with the trial of the claim. It does not suggest a concession by the defendants (MHB) that there are serious issues to be tried in the counter claim.

Defendants' (MHB) Submission

[23] The learned counsel for the defendants (MHB) submitted that the plaintiffs (Promet) have failed to establish the threshold requirement of a caveatable interest in this case, and there is, therefore, no necessity for this court to consider the two subsequent tests for the removal of a private caveat. For the purposes of this proceedings, the plaintiffs' (Promet) arguments are completely unsustainable and misconceived for reasons set out below.

A Section 323 Of The NLC

[24] Under s. 323(1) of the NLC, only specific classes of people are entitled to enter private caveat over land. Section 323(1) provides as follows:

B 323. Application for entry of private caveats.

(1) The persons and bodies at whose instance a private caveat may be entered are:

C (a) Any person or body claiming title to, or any registrable interest in, any alienated land or undivided share in any alienated land or any right to such title or interest;

(b) Any person or body claiming to be beneficially entitled under any trust affecting any such land or interest; and

D (c) The guardian or next friend of any minor claiming to be entitled as mentioned in paragraph (b).

[25] Gopal Sri Ram JCA in the Court of Appeal case of *Luggage Distributors (M) Sdn Bhd v. Tan Hor Teng* [1995] 3 CLJ 520; [1995] 2 CLJ 713 had paraphrased s. 323(1) as follows:

E To paraphrase s. 323(1) of the Code, a private caveat may be entered at the instance of any person or body who claims either:

(1) the title to land; or

F (2) any registrable interest in land.

The parameters of caveatability under s. 323(1)(a) are therefore circumscribed by these words : “title” and “registrable interest”. It is only one makes a claim to either of these in land may enter a private caveat.

G **[26]** It is trite law that under the NLC, the registered proprietor of any land obtains an indefeasible title. This is found in s. 340(1) of the NLC which provides as follows:

H **340. Registration to confer indefeasible title or interest, except in certain circumstances.**

The title or interest of any person or body for the time being registered as proprietor of any land ... shall, subject to the following provisions of this section, be indefeasible.

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[27] The title of a registered proprietor shall only be defeasible in the specific circumstances provided in s. 340(2), that is: **A**

(a) in any case of fraud or misrepresentation to which the person or body, or any agent of the person or body, was a party or privy, or **B**

(b) where registration was obtained by forgery, or by means of an insufficient or void instruments, or

(c) where the title or interest was unlawfully acquired by the person or body in the purported exercise of any power or authority conferred by any written law. **C**

[28] However, s. 340(2) and s. 340(3) of the NLC do not apply in the present case as there are no allegation of any fraud, misrepresentation or forgery against the defendants (MHB). The transfer of the lands was effected using valid registrable instruments duly executed by the plaintiffs (Promet). The lands were unconditionally transferred to the defendants (MHB) in good faith for valuable consideration. **D**

[29] The doctrine of indefeasibility of title has been authoritatively determined by the Federal Court in *Adorna Properties Sdn Bhd, supra* where the court held at p. 138 as follows: **E**

Subsection (1) of the 340 of the NLC is worded in plain language. It say that the 'title or interest of any person for the time being registered as proprietor of any land ... shall be indefeasible, subject to the provision in the section ... so long as his name is on the land register, his title or interest is indefeasible unless caught by subsections (2) and (3). **F**

[30] Based on the aforesaid, the purported termination of the 1st SPA has no relevance to the defendants' (MHB) rights as a registered proprietor. Even if the rights to title of PPSB were defeasible as a result of the alleged termination of the 1st SPA, the defendants (MHB) as a subsequent *bona fide* purchaser for value would be granted protection under the NLC by the proviso in s. 340(3) which states: **G**

Nothing in this subsection shall affect any title or interest acquired by any purchaser in good faith and for valuable consideration **H**

[31] In *Adorna Properties Sdn Bhd, supra*, it was said as follows:

By virtue of the proviso to sub-s. (3) of s. 340 of the NLC, any purchaser in good faith and for valuable consideration is excluded from the application of the substantive provision of sub-s (3). For this category of registered proprietors, they obtained immediate **I**

A indefeasible title to the lands. Therefore, on the facts of this case, even if the instrument of transfer was forged, the respondent nevertheless obtained an indefeasible title to the land.

B [32] Following the doctrine of *stare decisis*, the plaintiffs (Promet) is not a person or body which can ever successfully claim title to, or any registrable interest in the lands from the defendants (MHB), justifying the entry of a caveat. This was clearly demonstrated in the case of *Urethane Systems Sdn Bhd v. Quek Yak Kang* [2006] 6 CLJ 81 at pp. 86 to 87 whereby the court dismissed the caveator's application for extension of the caveat:

C ... the defendant had since 16 March 2005 become the registered proprietor of the said land free from encumbrances. His title to and interest in the said land are now indefeasible under s. 340(1) of the Code, and there is totally no evidence to defeat his registered title under s. 340(2) of the Code ... For the reasons adumbrated above

D the plaintiff's application is hereby dismissed with costs, and that the plaintiff do pay the defendant damages for the wrongful entry of the caveat.

[33] Further, in *Wong Kuan Tan v. Gambut Development Sdn Bhd* [1984] 2 CLJ 26; [1984] 1 CLJ (Rep) 441 the court held at p. 445:

E Thus it is plain that the appellant claims to have the right to lodge the caveat but based on cl. 4(a) of the deed of assignment ... but this alone cannot create a caveatable interest in the land. The contractual provision does not create an interest within the meaning of s. 323 of the National Land Code. Interests which are protectable by caveat are

F only interests recognized by the Code. The contractual provision does not amount to an equitable or other interest sufficient to support a caveat. Section 323(1) of the National Land Code sets out the classes of persons who may lodge private caveat. They are persons or body claiming title to any alienated land; or claiming any right to such title or interest; and includes persons or body claiming to be beneficially

G entitled under any trust affecting any such land or interest. The words 'any right to such title or interest' may be wide enough to allow rights arising under a contract for registrable dealing to be protected by a caveat but they are not wide enough to cover mere personal rights as distinguished from rights relating to land.

H [34] To further emphasize the point, in *DCB Finance Berhad v. Hui Yüik Ting* [1996] 1 LNS 12, the court held that a registered interest will always prevail over a caveat. At p 7 it was said:

I There is no evidence of any fraud by the Plaintiff. So I am of the view that the interest of the Plaintiff as a registered charge is indefeasible... as the charge was registered earlier in time ie, on 9 July 1992 whereas the caveat was lodged on 13 August 1994 ie, about 17 months after the registration of the charge, the interest of the plaintiff prevails over that of the defendant ...

There is nothing this court can do except to sympathise with the predicament faced by the defendant. Perhaps the remedy available would be for the defendant to sue the vendor (Robin Siaw) for damages for breach of contract.

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In the circumstances and for the reasons given, I hold that as between the plaintiff and the defendant there are no serious questions to be tried. No balance of convenience has been shown. The registered charge of the plaintiff ranked in priority over the caveat lodged by the defendant. The plaintiff as the registered chargee has an indefeasible title to the land. As such the plaintiff is entitled to have the said caveat removed and so I order.

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[35] Therefore, the plaintiffs' (Promet) rights, if any, will only amount to a contractual right against PPSB based on the 1st SPA. The defendants (MHB) is not party or privy to the 1st SPA and neither does the plaintiffs (Promet) have any privity of contract with the defendants (MHB). Thus, as determined in *Yuny-Li Home Care Sdn Bhd v. Fairview Development Sdn Bhd* [2009] 1 LNS 543, the court said:

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The Defendant's claim, which has to raise a serious question to be tried, must relate to an interest in the said Land ... Here Fairview will have to establish to an interest in the Land. If terminate the agreement, you are interested in damages and your interest is not caveatable.

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[36] Accordingly the plaintiffs (Promet) does not have a caveatable interest within the meaning of s. 323 of the NLC. At the risk of repetition, the plaintiffs (Promet) have failed to establish that it has caveatable interest in the lands to justify the lodgement of the caveat.

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[37] As there is no lawful basis under which the good titles obtained by the defendants (MHB) from PPSB in respect of the lands can be rendered defeasible, there is accordingly, no issue to be tried. Thus, there is no necessity for this court to consider the matter further.

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Prejudice And Damages To Defendants (MHB)

[38] Now, it is not disputed that the defendants (MHB) has been in possession and occupation of the lands since 1997 with the full knowledge and consent of the plaintiffs (Promet). The defendants (MHB) have invested more than RM200 million to construct and develop the Four Seasons Resorts Langkawi (a 6-star holiday resort) on the lands, which has been in operation since around April 2005.

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[39] As such, the existence of the caveat over the lands is prejudicial to the defendants (MHB) as the caveat affects the value of the lands and thereby, the rights and interests of the shareholders of the defendants (MHB). Further, it diminishes investor confidence in the defendants (MHB) and that is a loss which is unquantifiable.

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- A [40] The prejudice to the defendants (MHB) is further compounded by the facts that the plaintiffs (Promet) had acted with inordinate delay in prosecuting its alleged rights. The plaintiffs (Promet) had stood by while titles were registered way back in 2002. This factor smacks bad faith on the part of the plaintiffs (Promet). The plaintiffs (Promet) had failed to provide any explanation for the delay in lodging the caveat and filing a counter claim, and that too only when the defendants (MHB) had filed the KL Suit for specific performance. In the case of *Megapillars Sdn Bhd v. Loke Kwok Four* [1996] 4 CLJ 82, the Court held at p. 93 as follows:
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- C The object of a caveat like that of an interlocutory injunction is to provide interim protection to the interest of the applicant who can show that he has a genuine claim on that interest, and that the *status quo* between the parties should be maintained pending the final disposal of his claim at a later date. It follows therefore, that the applicant must pursue his claim timeously in the court and failure to do so will defeat the privilege of having his caveat being applied against the inalienable right of the registered proprietor to enjoy his land. Thus, where there has been an inordinate delay on the part of the caveator to prosecute his claim against the caveatee, the court will not lend its assistance to allow him to maintain this caveat to the detriment of the registered proprietor as to prevent a man dealing with his property after such a long delay is so in inequitable.
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- [41] As to the plaintiffs' (Promet) contention that the defendants (MHB) have no plan to dispose of the lands is in itself cannot be a ground for the extension of the validity of the caveat. The fact that the defendants (MHB) have no plan at the present to dispose of the lands does not mean that the defendants (MHB) will not want to dispose of it if the right opportunity arises, or deal with the Lands in ways other than that which involves a disposition.
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- [42] The lands are now encumbered by a caveat and all that legal implications of that follow, including the inability to charge, sub divide, or amalgamate the lands. This is a prejudice to the defendants (MHB) that should tilt the balance of convenience against the extension of the caveat.
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Compensation

- H [43] As regard compensation, s. 329 of the NLC provides:

- I Any person or body who wrongfully, or without reasonable cause, secures the entry of, or fails to withdraw, any private caveat shall be liable to pay compensation to any person or body who thereby suffers any damages or loss.

...

[44] By reasons of the matters aforesaid, the plaintiff's originating summons is hereby dismissed, the caveat *vide* Presentation No. 7836/2008 is ordered to be removed forthwith. The defendants (MHB) is at liberty to file on application for compensation to be assessed for wrongful lodgement of the caveat.

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